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Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SPRING TERM, 2003

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ERIC R. MEYER,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

---

On Petition for Writ of Certiorari to the
United States Court of Appeals
For the Seventh Circuit

---

# PETITION FOR WRIT OF CERTIORARI

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MICHAEL J. GONRING
Counsel of Record –
JOSHUA B. FLEMING
Counsel for Petitioner
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497
(414) 277-5000

31 pp

## QUESTION PRESENTED FOR REVIEW

When the District Court denied Petitioner's 28 U.S.C. § 2255 motion on procedural grounds, did the Court of Appeals err by not reviewing the District Court's procedural ruling in refusing to grant a Certificate of Appealability?

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On Petition for Writ of Certiorari to the
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For the Seventh Circuit

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## PETITION FOR WRIT OF CERTIORARI

Eric R. Meyer respectfully petitions the Supreme Court of the United States for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit, rendered and entered in case number 02-C-353 in that Court on February 26, 2003, which affirmed the judgment and commitment of the United States District Court for the Western District of Wisconsin.

## OPINION BELOW

Copies of the decisions of the United States Court of Appeals for the Seventh Circuit, affirming the Order of the United States District Court for the Western District of Wisconsin, as well as the District Court's decision are contained in the Appendix at A1-A10. The Seventh Circuit's decisions on Meyer's direct appeal can be found respectively at the following citations: *U.S. v. Meyer*, 157 F.3d 1067 (7th Cir. 1998) and *U.S. v. Meyer*, 234 F.3d 319 (7th Cir. 2000). This Court denied Meyer's Petition for Writ of Certiorari on June 18, 2001 in *Meyer, Eric R. v. United States*, Case No. 00-1442. (A-13)

## STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Rule 10(c) of the Rules of the Supreme Court of the United States. Denial of a certificate of appealability is subject to review by this Court under 28 U.S.C. § 1254. *See Hohn v. United States*, 524 U.S. 236(1998).

The decision of the Court of Appeals from which review is sought was entered on February 26, 2003. This petition is timely filed in accordance with Sup.Ct.R. 13.1. The District Court exercised its jurisdiction pursuant to 28 U.S.C. § 2255. The Court of Appeals had jurisdiction over Meyer's motion for a Certificate of Appealability pursuant to 28 U.S.C. § 2253 and Federal Rule of Appellate Procedure 22(b).

## STATUTORY PROVISIONS INVOLVED

Petitioner intends to rely upon the following constitutional and statutory provisions:

**28 U.S.C. § 2253**

**(c)(2)** A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

**28 U.S.C. § 2255**

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such a sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

## STATEMENT OF THE CASE

### Indictment and Conviction

A Grand Jury sitting in the Western District of Wisconsin returned an indictment against Eric R. Meyer on April 24, 1996, charging him with conspiracy to possess with intent to distribute and to distribute Schedule I and Schedule II controlled substances, specifically marijuana and cocaine, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 846 (A-1).

The Grand Jury did not include in its indictment any mention of the quantity of marijuana or cocaine involved in the conspiracy. Moreover, there was no charge or indictment for first degree murder and no other murder related charges were brought against Mr. Meyer.

Meyer was convicted twice, first after a jury trial in front of Judge Barbara B. Crabb (R. 181; 198), then, after an appeal to the United States Court of Appeals for the Seventh Circuit and a reversal because of an instructional error, *United States v. Meyer*, 157 F.3d 1067, (7th Cir. 1998), *cert. denied*, 526 U.S. 1070(1999), before Judge John C. Shabaz (R.318 at 105-08).

The Jury Instructions and Verdict

In both trials, the Court instructed the jury as to the elements of the offense as follows:

**Object of the Conspiracy**

> In connection with the first element of the conspiracy offense charge in count I the government must prove the existence of a conspiracy to accomplish at least one of the following objectives as charged in count I: to possess cocaine or marijuana with the intent to distribute it or to distribute cocaine or marijuana.
>
> Although you need not find the government has proved all of the alleged objects of the conspiracy in order to find that the government has met its burden as to the first element of the charge you must agree unanimously on at least one of them. It is not enough if you all agree that there was an objective to the alleged conspiracy but you cannot unanimously agree on at least one of those objectives.
>
> In proving the objectives of the charged conspiracy, the government is not required to prove that the defendant or any other alleged conspirator actually possessed cocaine or

> marijuana with the intent to distribute it or actually distributed cocaine or marijuana, as long as they agree to do one of these things as charged in count one.

There were no separate instructions as to the elements of an offense under § 841(b)(1)(A), or that quantity must be found beyond a reasonable doubt. Additionally, the verdict form the juries took to the jury room was a general, one-question verdict form, asking for no special findings (A-14). Finally, the juries were not asked to make a finding regarding any involvement of Meyer in murder.

## Sentencing

After each of the two trials, there was disputed evidence of Meyer's alleged involvement in murder but a finding by each judge by clear and convincing evidence that Meyer had participated in the murder (R.198 at 166; R.318 at 98). Each judge also unilaterally adopted the drug quantity findings in the presentence report (R.318 at 97-101). Finally, each judge applied the cross-referencing provisions of the Federal Sentencing Guidelines, U.S.S.G. § 2D1.1(d)(1) to the first degree murder provisions of § 2A1.1 on the way to a sentence of life imprisonment (R.318 at 101).

## The Appeal

After his second trial, Meyer, through trial counsel, filed a notice of appeal on April 15, 1999. The Seventh Circuit appointed the undersigned as appellate counsel on May 11, 1999 pursuant to the Criminal Justice Act.

Meyer argued that his due process rights were violated because of the ineffective assistance of counsel during his second trial; that the District Court had committed clear error by enhancing his sentence based on a finding that

Meyer had committed murder, and that his due process rights had been violated by the Court's enhancement based on the cross-reference to murder. In support of his due process argument regarding enhancement, Meyer submitted to the Seventh Circuit the Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466(2000) (A-11). *Apprendi* had been decided by the Court after oral argument to the Seventh Circuit but before its decision.

The Seventh Circuit affirmed the District Court in a published decision, *United States v. Meyer*, 234 F.3d 319 (7th Cir. 2000).

Meyer did not seek rehearing, but instead sought a Writ of Certiorari in light of *Apprendi* and the developing case law in the circuits that held that quantity was an element of 21 U.S.C. § 841, and therefore must be found by a jury beyond a reasonable doubt. *See e.g. U.S. v. Westmoreland*, 240 F.3d 618 (7th Cir. 2001). In his Petition for Writ of Certiorari, Meyer relied almost exclusively on *Apprendi*, arguing that because the jury in his case had not made any findings of quantity of drugs beyond a reasonable doubt,[1] and had not heard evidence related to the alleged murder for which his sentence was enhanced, he was unconstitutionally subjected to a life sentence beyond the statutory maximum. The Court denied the Writ of Certiorari on June 18, 2001. (A3; A13)

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[1] Meyer was charged with distributing both cocaine and marijuana, which are treated separately for sentencing purposes, with independent statutory maximum sentences. *See* 21 U.S.C. § 841 (2003). The jury in Meyer's case made no findings related to either, leaving open the question of whether the jury would have found the necessary quantity of either and what the applicable maximum sentence would have been under 21 U.S.C. § 841.

Meyer then petitioned the United States District Court for the Western District of Wisconsin pursuant to 28 U.S.C. § 2255 for an Order vacating his sentence. The District Court denied Meyer's request for an evidentiary hearing and denied Meyer's motion to vacate his sentence (A1-A7). Judge Shabaz acknowledged that *Apprendi* applied to Meyer's second conviction and sentence but stated that Meyer had procedurally defaulted on his *Apprendi* appeal because he had failed to timely raise the *Apprendi* issue in the trial court and the Court of Appeals, and had not demonstrated "cause and prejudice" for not pursuing this claim. (*Id.*)

In accordance with 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b), Meyer filed a Notice of Appeal and Motion for Certificate of Appealability in the District Court, which was denied by Judge Shabaz on October 9, 2002. (A-8; A-9) Meyer then filed a Motion for Certificate of Appealability in the Court of Appeals for the Seventh Circuit on December 2, 2002. The Seventh Circuit denied Meyer's Motion on February 26, 2003, finding no substantial showing of the denial of a constitutional right (A-10). Meyer now seeks a Writ of Certiorari to mandate that the Seventh Circuit issue a Certificate of Appealability.

## REASONS FOR GRANTING THE WRIT

The Court has held that decisions regarding applications for Certificates of Appealability ("COA") are judicial in nature and fall within its jurisdiction under 28 U.S.C. § 1254(1). *Hohn v. United States*, 524 U.S. 236, 253, 118 S. Ct. 1969, 1978, 141 L. Ed.2d 242 (1998). Both the Federal Rules of Civil Procedure and the uniform practice of courts construe 28 U.S.C. § 2253(c)(1) as conferring the jurisdiction to issue COAs upon the Court of Appeals rather than a judge acting under his or her own seal.

*Id.* at 1974. Orders denying COAs are issued "in the name of the court and under its seal." *Id.* at 1973.

The Court also has held that although a COA may issue only upon the "substantial showing of the denial of a constitutional right," *Slack v. McDaniel*, 529 U.S. 473, 483(2000), when the rejection of a Section 2255 motion is not made on the merits but on procedural grounds, there is a different analysis:

> [W]hen the District Court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, *a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the District Court was correct in its procedural ruling.*

*Id.*. at 484 (emphasis added).

In this case, the District Court did not make any findings relative to the merits of Meyer's constitutional claim but acknowledged that an *Apprendi* claim was made, then dismissed Meyer's petition due to a procedural error. On Meyer's Motion for a Certificate of Appealability, the Seventh Circuit did not review the District Court's procedural ruling, yet found that there had not been a substantial showing of the denial of a constitutional right (A-10).

The Court of Appeals should have analyzed the District Court's decision under *Slack*, and the COA should have issued.

## I.

## THE COURT OF APPEALS ERRED WHEN IT DID NOT REVIEW THE DISTRICT COURT'S RULING THAT MEYER'S MOTION WAS PROCEDURALLY FAULTY.

The District Court accepted the fact that Meyer's petition raised a constitutional issue under *Apprendi*, (A-4), but that it was procedurally defective (A-5 - A-7)). The Court of Appeals found no substantial showing of the denial of constitutional right and did not consider, as it should have under *Slack*, the procedural issue. Both were wrong.

The District Court erred on the procedural issue and, under *Slack*, the Court of Appeals should have reviewed that ruling.

Meyer properly raised *Apprendi* on direct appeal. His appointed counsel, in accordance with Federal Rule of Appellate Procedure 28(j) and Seventh Circuit Rule 28(e), and immediately following this Court's decision in *Apprendi*, submitted the case for consideration by the Court of Appeals after oral argument but before the Seventh Circuit's decision was issued. (A-11) However, the Court of Appeals ultimately affirmed Meyer's conviction with no mention of *Apprendi* or Meyer's submission. *See U.S. v. Meyer*, 234 F.3d 319. Meyer then fully briefed *Apprendi* in his Petition for Writ of Certiorari to this Court, further preserving his *Apprendi* claim for review on collateral attack.

Thus, the District Court erred when it concluded Meyer had procedurally defaulted on his *Apprendi* claim. A direct appeal includes a petitioner's writ of certiorari to the Supreme Court. *Anderson v. Litsher*, 281 F.3d 672, 674 (7th Cir. 2002). Moreover, this Court has held that a conviction becomes final when "a judgment of conviction has been

rendered, the availability of appeal exhausted, *and the time for a petition for certiorari [has] elapsed or a petition for certiorari [filed and] finally denied.*" *Griffith v. Kentucky*, 479 U.S. 314, 322(1987)(emphasis added).

The Court of Appeals' denial of the COA also was in error for its finding that Meyer had not made a substantial showing of a denial of a constitutional right. The District Court correctly found that an *Apprendi* issue was presented by Meyer's petition – whether Meyer's life sentence exceeded the statutory maximum because quantity, an element of his crime, had not been found by the jury beyond a reasonable doubt. At a minimum, it is conceivable that other jurists of reason would have debated whether there existed a substantial showing of the denial of Meyer's constitutional rights. *Slack v. McDaniel*, 529 U.S. at 484.

The Court of Appeals did not explain its ruling or offer an analysis of the issue, making it difficult to argue against reasoning that is not apparent. Nevertheless, this Court has cautioned that in examining a petitioner's application to appeal the denial of his habeas petition, "obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor." *Id. See also Jefferson v. Welborn*, 222 F.3d 286, 289 (7th Cir. 2000)(explaining that a COA should issue unless the claims are "utterly without merit.").

While the COA requirement of §2253(c) is aimed at avoiding the unnecessary devotion of judicial resources on frivolous issues, it at the same time affords petitioners an opportunity to persuade the courts through full briefing and arguments on the merits of issues that may at first appear to lack merit. *Id.* Moreover, even if a question may be well settled in a circuit, the petitioner can still meet the COA standard where another circuit has reached a conflicting

view. *Lambright v. Stewart,* 220 F.3d 1022, 1025 (9th Cir. 2000).

Because Meyer raised *Apprendi* on his direct appeal, the District Court should not have applied the procedural cause and prejudice rule, but should have analyzed the merits of Meyer's constitutional claim. More important, the Court of Appeals should have applied the second prong of *Slack* and found that jurists of reason could have found, given the facts in the record, that the District Court had erred in its procedural ruling.

However, because both the District Court and the Court of Appeals denied Meyer a COA, he was denied the opportunity to brief and argue the merits of the issue presented, and ultimately the right to have the denial of his constitutional rights heard at all.

## CONCLUSION

For all the above reasons, petitioner Eric Meyer respectfully requests that the Court grant his Petition for Writ of Certiorari and remand this case to the Seventh Circuit for issuance of a Certificate of Appealability.

Dated this 27th day of May, 2003.

Respectfully Submitted,

MICHAEL J. GONRING
Counsel of Record
JOSHUA B. FLEMING
Counsel for Petitioner,
**Quarles & Brady LLP**
411 East Wisconsin Ave.
Milwaukee, WI 53202-4497
(414) 277-5000

NO. _____

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**IN THE**
**SUPREME COURT OF THE UNITED STATES**

**SPRING TERM, 2003**

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**ERIC R. MEYER,**

***Petitioner,***

**v.**

**UNITED STATES OF AMERICA,**

***Respondent.***

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**On Petition for Writ of Certiorari to the**
**United States Court of Appeals**
**For the Seventh Circuit**

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# APPENDIX

---

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF WISCONSIN**

---

ERIC R. MEYER,

Petitioner,

v.

ORDER
02-C-353-S
96-CR-10-S-01

UNITED STATES OF AMERICA,

Respondent.

---

Petitioner moves to vacate his sentence pursuant to 28 U.S.C. §2255. The government responded on July 19, 2002. Petitioner replied on August 19, 2002. Petitioner's request for an evidentiary hearing will be denied because his petition can be decided on the current record.

FACTS

On February 28, 1996 a federal grand jury in the western District of Wisconsin returned a one-count indictment charging Gordon 0. Hoff, Sr. and Eric R. Meyer with conspiring to distribute cocaine and to possess cocaine with intent to distribute. On April 24, 1996 the grand jury returned a two count superseding indictment. Count 1 expanded the dates of the conspiracy and added allegations that Hoff and Meyer had conspired to distribute marijuana and to possess marijuana with intent to distribute as well as cocaine. Count 2 was a forfeiture count seeking the forfeiture of currency, real property and vehicles.

Meyer moved to dismiss the indictment claiming that it violated his immunity agreement with the government. After holding two evidentiary hearings the Court denied this motion finding that Meyer had breached the immunity agreement.

On September 18, 1996 after a jury trial petitioner was found guilty of the charges. On December 20, 1996 after a two-day sentencing hearing the Court found by clear and convincing evidence that Meyer shot and killed Dennis Fenner in April 1994. Pursuant to USSG §2D1.1(d)(1), which provides a cross-reference to USSG §2A1.1 (murder), Meyer was sentenced to life in prison.

Meyer appealed his conviction contending that the court erred in failing to provide the jury with a "buyer-seller" instruction and in failing to suppress his immunized statements. The United States Court of Appeals for the Seventh Circuit reversed petitioner's conviction on the jury instruction claim and remanded for a new trial. The Court of Appeals affirmed the district court's decision to admit his statements. United States v. Meyer and Hoff, Sr., 157 F.3d 1067, 1075 (7th Cir. 1998)

Upon remand the case was assigned to this Court and a second jury trial commenced on February 8, 1999. Petitioner was found guilty. At the sentencing hearing on April 9, 1999 the Court found by clear and convincing evidence that petitioner shot and killed Fenner in April 1994 in order to advance the drug distribution conspiracy. The Court sentenced petitioner to life based on the sentencing guidelines.

Petitioner appealed this conviction arguing that his trial counsel was ineffective in dealing with a government witness at trial, that the evidence did not support the district court's determination that he committed a murder during the drug conspiracy and that the use of the murder cross-reference violated his constitutional due process rights. On December 4, 2000 the Court of Appeals rejected petitioner's arguments and affirmed his conviction and sentence. United States v. Meyer, 234 F.3d 319 (7th Cir. 2000).

Petitioner filed a petition for a writ of certiorari

to the United States Supreme Court. The Supreme Court denied the petition on June 18, 2001.

MEMORANDUM

Petitioner contends that his sentence should be vacated because: the drug quantity amounts were not charged in the indictment and were not submitted to the jury for a reasonable doubt finding; the sentencing guidelines cross-reference for murder is unconstitutional; he was denied effective assistance of counsel at trial and sentencing and his immunized statements were used against him at trial.

Three types of issues cannot be raised in a 28 U.S.C. § 2255 motion: issues that were raised on direct appeal, absent a showing of changed circumstances; non-constitutional issues that could have been raised but were not raised on direct appeal and constitutional issues that were not raised on direct appeal, unless petitioner demonstrates cause for procedural default as well as actual prejudice from the failure to appeal. Prewitt v. United States, 83 F.3d 813, 816 (7th Cir. 1996). Issues raised and decided on direct appeal may not be raised again in a 28 U.S.C. § 2255 motion pursuant to the "law of the case". See Daniels v. United States, 26 F.3d 706, 711-12 (7th Cir. 1994).

Two issues, that the sentencing guidelines cross-reference for murder is unconstitutional and that he was denied effective assistance of counsel concerning the testimony of a government witness, were raised on his second direct appeal and decided against him. The issue that his immunized statements were used against him at trial was raised and decided against him in his first appeal.

Petitioner did not raise on appeal any ineffective assistance of counsel claim concerning sentencing. He

is now barred from raising this issue unless he can show cause and prejudice. See United States v. Smith, 241 F. 3d 546 (7th Cir. 2001). Petitioner has not established either cause or prejudice for raising this claim on appeal.

Petitioner claims the drug quantity amounts were not charged in the indictment and were not submitted to the jury for a reasonable doubt finding in violation of Apprendi v. New Jersey, decided June 26, 2000. The Court in Apprendi held that other than the fact of a prior conviction any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the jury and proved beyond a reasonable doubt.

The United States Court of Appeals recently held that Apprendi is not retroactive on collateral review. Curtis v. United States, F. 3d, 2002 WL 1332817 (7th Cir. June 19, 2002). The Court stated, *"Apprendi* therefore does not disturb sentences that became final before June 26, 2000, the date of its release."

This decision supports the conclusion that Apprendi is applicable to petitioner's second conviction and sentence which was entered prior to June 26, 2000, but did not become final until the United States Supreme Court denied petitioner's petition for a writ of certiorari on June 18, 2001. To obtain collateral relief based on Apprendi petitioner must show "cause and prejudice" for not pursuing his claim in the trial court or on direct appeal. U.S. v. Smith, 241 F. 3d at 548. In Smith, the Court addressed a similar case as follows:

> To obtain collateral relief Smith must show "cause and prejudice" because he did not contend at his trial in 1992 that the

> jury must determine the quantities of drugs involved in the conspiracy. (Citations omitted). Smith may believe that his neglect is excused because *Jones v. United States,* 526 U.S. 227, 243, n. 6, 119 S.Ct. 1215, 143 L.Ed2d 311 (1999) represents the Supreme Court's first express statement that the Constitution requires issues of this kind to be resolved by juries. A negative implication to the same effect may be derived from *Edwards v. United States,* 523 U.S. 511, 118 S.Ct. 1475, 140 L.Ed2d 703 (1998), which holds that the judge determines drug quantities for purposes of the Sentencing Guidelines; the Court reserved the question whether the thresholds under § 841(b) must be presented to juries. Even *Edwards,* was released long after Smith's 1992 trial.
>
> Nonetheless, the lack of precedent for a position differs from "cause" for failing to make a legal argument. Indeed, even when the law is against a contention, a litigant must make the argument to preserve it for later consideration. (Citations omitted). "Cause" means some impediment, and Smith does not contend that any outside force impeded his legal defense in 1992.

The Court held that Smith had not established cause for failing to raise Apprendi in 1992. Petitioner did not raise Apprendi arguments in either 1996 or 1999. He first raised it after oral argument on appeal but the Court of Appeals did not address the argument in its December 4, 2000 decision. Like Smith, petitioner has not established cause for not timely

raising his Apprendi arguments with the trial court or the Court of Appeals in 1996 and 1999, respectively.

The Court stated in Ashley v. U.S., 266 F. 3d 671,675(7th Cir. 2001) as follows:

> Moreover, unless Ashley can justify his failure to raise the question on direct appeal by demonstrating cause and prejudice, the retroactivity of *Apprendi* does not matter.

To show prejudice petitioner would have to show that had a jury determined the drug quantities he would have received a sentence of twenty years or less. 21 U.S.C. § 841 (b) (1) (C). He has not made this showing. The evidence of the drug quantities in this case was overwhelming. Five kilograms of uncut cocaine and 422 pounds of marijuana are essentially uncontroverted. Petitioner did not challenge the drug quantities at sentencing or on appeal. Because petitioner has neither shown cause for his failure to raise the Apprendi issue earlier nor prejudice resulting from such failure, he is precluded from seeking relief on this collateral attack under 28 U.S.C. § 2255 according to Smith and Ashley. Accordingly, petitioner's motion under 28 U.S.C. § 2255 will be denied.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his motion under 28 U.S.C. § 2255 must be denied. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's request for an evidentiary hearing is DENIED.

Meyer v. U.S., 02-C-353-S

IT IS FURTHER ORDERED that petitioner's motion to vacate his sentence under 28 U.S.C. § 2255 is DENIED.

Enter this ____ day of August, 2002.

BY THE COURT:

_____

John C. Shabaz
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

---

ERIC R. MEYERS,

Petitioner,

ORDER

v.

02-C-C-353-S
96-CR-10-S-02

UNITED STATES OF AMERICA,

Respondent.

---

On August 20, 2002 petitioner's motion to vacate his sentence was denied. Petitioner filed a notice of appeal on October 8, 2002 and paid the filing fee. The Court construes this notice as a request for a certificate of appealability.

A certificate of appealability may be issued only if the petitioner has shown the denial of a constitutional right. Petitioner has not shown the denial of a constitutional right because he was precluded from seeking collateral relief when he did not show cause for his failure to raise the Apprendi issue earlier nor prejudice resulting from such failure. Accordingly, petitioner's request for a certificate of appealability will be denied.

ORDER

IT IS ORDERED that petitioner's request for a certificate of appealability is DENIED.

Entered this 9th day of October, 2002.

BY THE COURT

JOHN C. SHABAZ
District Judge

# UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

SUBMITTED FEBRUARY 1, 2003
DECIDED FEBRUARY 26, 2003

BEFORE

HON. FRANK H. EASTERBROOK, *CIRCUIT JUDGE*
HON. TERENCE T. EVANS, *CIRCUIT JUDGE*

No. 02-3788

ERIC MEYER,
*Petitioner Appellant,*

v.

UNITED STATES OF AMERICA,
*Respondent Appellee.*

Appeal from the United States District Court for the Western District of Wisconsin

No. 02 C 353

John C. Shabaz,
*Judge.*

ORDER

Eric Meyer has filed a notice of appeal from the denial of his motion under 28 U.S.C. § 2255 and an application for a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED.

July 12, 2000

**VIA UPS DELIVERY**
Mr. Gino Agnello
Clerk of Court
U.S. Court of Appeals
for the Seventh Circuit
219 S. Dearborn St.
Chicago IL 60604

**RE: United States of America, Plaintiff-Appellee v. Eric R. Meyer, Defendant-Appellant**
**Appeal No. 99-1919**

Dear Mr. Agnello:

Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28(e), Defendant-Appellant Eric R. Meyer encloses ten (10) copies of the Supreme Court's decision in Apprendi v. New Jersey, 2000 WL 807189. Defendant-Appellant believes this case may support his argument as found in Section III of his brief at page 29.

Sincerely yours,

Michael J. Gonring

MJG/bgn
*w/encls.
650830.70018

cc: John W. Vaudreuil, Esq. (w/encl.)
Assistant U. S. Attorney
Suite 200, City Station
660 W. Washington Avenue
P.O. Box 1585
Madison, WI 53701-1585

bc: Eric Meyer (w/encl.)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

June 18, 2001

Mr. Michael J. Gonring Quarles & Brady
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497

Re: Eric R. Meyer
v. United States
No. 00-1442

Dear Mr. Gonring:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

William K. Suter

William K. Suter, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

Plaintiff,

VERDICT

v.

96-CR-10-S

ERIC R. MEYER,

Defendant.

We, the jury in the above-entitled cause, find the defendant Eric R. Meyer

_____
("Guilty" or "Not Guilty")

of the offense charged in the indictment returned against him.

Signed this _____day of _____,1999.

_____
Foreperson